

(1998) 05 AHC CK 0047
In the Allahabad High Court
Case No : C.M.W.P. No. 14955 of 1991

Smt. Chhanga and another	Vs	APPELLANT
Ist Additional District Judge, Jaunpur and others		RESPONDENT

Date of Decision : 25-05-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 168, 229, 229B, 229B(2), 229B(3)

Citation : (1998) 3 AWC 2094 : (1998) RD 647

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Pravin Kumar srivastava, for the Appellant; S.C. and S.H. Yadav, I.M. Singh and A.K. Yadav, for the Respondent

Judgement

D.K. Seth, J.—Opposite party No. 3 had filed a suit being O. S. No. 324 of 1987 in the Court of Addl. Munsif Magistrate for cancellation of a sale deed dated 27.1.1987 with a prayer to inform the Sub-Registrar and for cost or any other relief on the allegations that there was no necessity to execute the sale deed by the plaintiff In favour of the defendant and that the plaintiff had never intended to transfer nor had ever transferred the property to the defendant. She never went to the office of Registrar to execute the sale deed. She had never put her thumb impression on the alleged sale deed. The sale deed appears to have been signed by someone else and was wrongly registered The plaintiff had never received any consideration. The said fact would be apparent from the fact that the consideration in the sale deed was shown shockingly low and the transfer was inconsistent with the provisions of Section 168 of the U. P. Z. A. and L. R-Act. The sale deed was an outcome of old enmity between the parties and was never executed by the plaintiff and as such the same is not binding on her.

2. The defendant petitioners had filed an objection as to the maintainability of the said suit in a civil court in view of Section 331 of the U. P. Z. A. and L. R. Act.

This application was allowed by the learned trial court by an order dated 10.7.1989. A revision being Revision No. 205 of 1989 was filed by the plaintiff. By an order dated 20.3.1991, the learned 1st Addl. District Judge. Court Jaunpur, allowed the revision and the order of the learned Munsif was set aside holding, inter alia, that the present suit is maintainable in a civil court. This order has since been challenged in this petition.

3. Mr. Prem Chand assisted by Mr. Praveen Kumar Srivastava submits that from the averments made in the plaint, the relief has been claimed on the basis of a fact that the sale deed is a void one, as such relying on the decision in the case of Smt. Dulari Devi v. Janardan Singh and others 1991 (9) LCD 331, he contends that if the deed is void, in that event the same can be ignored by the revenue authorities and, therefore, it is not necessary to be decided by a civil court and as such the proceedings before the revenue authorities is maintainable and that before the civil court could not be maintainable in view of the bar provided in the respective revenue laws. According to him by provisions of Section 331 of the Act the suit is barred under Serial No. 34 of the Schedule II which provides for jurisdiction of the revenue authorities in respect of a declaration of a right in respect of the suit property. Therefore, the trial court had rightly decided the issue while the revisional court had failed to exercise its jurisdiction and had acted irregularly in reversing the order of the learned trial court against the legal position.

4. Mr. S. L. Yadav, learned counsel for the opposite party on the other hand contends that in the present case no right under the U. P. Z. A. and L. R. Act is being sought to be adjudicated upon in the civil court. Even no consequential relief is being asked in the said suit. According to him. Schedule 11 does not prescribe any forum for grant of relief in the form of cancellation of the sale deed. The suit as framed does not come within the purview of Sections 229B and 229C which can be brought within the ambit of Serial No. 34 of Schedule II to the Act. On this ground he contends that the suit is very much maintainable in the civil court. He relies on various decisions which he had cited at the Bar and the same will be dealt with at appropriate stage.

6. I have heard Mr. Prem Chand and Mr. Yadav at length.

7. Section 331 of the U. P. Z. A. and L. R. Act prohibits jurisdiction of the civil court in respect of the matters prescribed in the Schedule 11. The said section provides that except as provided in the Act no Court other than a Court mentioned in Column 4 of Schedule II shall take cognizance of any suit, application, or proceedings mentioned in Column 3 thereof or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application, notwithstanding anything contained in the Code of Civil Procedure.

8. Thus, the section is explicitly clear that those cause of action in respect of which any proceedings or suit can be specified by the relief provided under the

said Act cannot be taken cognizance of by a civil court. It further makes it clear that those reliefs which can be had in Column 3 of Schedule II before the authority mentioned in Column 4 cannot be entertained by a civil court.

9. Thus, the basis of the said provision is that the first condition would be that the relief must be a relief which can be had within the purview of the said Act or the reliefs which find mention in Column 3 of Schedule II available before the Court mentioned in Column 4 thereof. Unless these tests are satisfied Section 331 cannot be attracted. Thus Section 331 specifically Includes the suit, the nature and character whereof is specified in the said section. From the very language used in the said section, it appears that the same is conclusive and exhaustive, therefore, all suits which do not conform to the character as specified in Section 331 can very well be maintained in a civil court.

10. Now Serial No. 34 of Schedule II deals with suit for declaration of right under Sections 229, 229B and 229C. Therefore, if the present suit is a suit for declaration within the meaning of Sections 229, 229B and 229C and in that event the suit before the civil court cannot be entertained. Section 229 deals with declaration that might be sought for by the Gaon Sabha against any person claiming to be entitled to any right in any land for the declaration of the right of such person in such land. Thus Section 229 is a right given to the Gaon Sabha to institute a suit against any person. This provision does not apply to a suit between two private individuals both of whom are claiming to be Bhumidhars in respect of the land, one by reason of the alleged sale deed and the other by reason of non-execution of such sale deed. Therefore, the present suit does not come within the purview of Section 229. Similarly, the present suit also does not satisfy the criteria provided u/s 229C under which the Gaon Sabha or a Bhumidhar of any land may sue any person claiming to be an asami of such land for a declaration of the rights of such person, which is not a case in the present one since both the parties are seeking themselves to be Bhumtdhars against each other. Now Section 229B sub-section (1) confines to a declaration in respect of a person claiming to be an asami under a land holder for a declaration of his right as asami in such holding or any part thereof, as the case may be. Therefore, the present suit also does not come within the purview of sub-section (1) of Section 229B. Sub-section (3) of Section 229B provides that the provisions of sub-sections (1) and (2) shall apply mutatis mutandis in a suit by a person claiming to be a Bhumidhar under a land holder which is to mean the State Government and the Gaon Sabha. Therefore, the dispute, contemplated in sub-section (3) of Section 229B, is between the Bhumidhar and the State Government or the Gaon Sabha, as the case may be. It does not contemplate a dispute between two Bhumidhors. Neither the Gaon Sabha nor the State Government is disputing the right of these Bhumidhars to the extent that either of them may be Bhumidhar. Whether the plaintiff is the Bhumidhar or the defendant is the Bhumidhar, it may be a dispute between two Bhumidhars but it is not a dispute between either of them and the State Government or the Gaon Sabha. In the present case, plaintiff has claimed cancellation of deed on the

ground mentioned in the suit. In the suit, she has not claimed any declaration of right nor she has asked for any consequential relief in the suit. Thus, the plaintiff has also not claimed any right in respect whereof any proceedings can be had before the revenue authority nor she is claiming any right which can be had before any of the authority mentioned in Column 4 in respect of any relief mentioned in Column 3. The suit is a suit for cancellation of sale deed. No declaration of right either as Bhumidhar or otherwise is being asked for in the suit and that too. not against the State Government or the Gaon Sabha. Thus, the suit does not fall within the purview of Section 229B as well.

11. The decision in the case of Smt. Dulari. Devi (supra) was a decision in which the question as to the cognizance of the suit by the consolidation authorities under the U. P. Consolidation of Holdings Act. 1954, was under consideration in relation to Section 49 thereof which barred the jurisdiction of the civil court. There it was held that where a deed is void the same cannot be ignored by the consolidation authorities and, therefore, it can be within the jurisdiction of the consolidation authorities to decide the dispute and as such the said suit in respect whereof void deed was involved was hit by Section 49 of the U. P. Consolidation of Holdings Act. u/s 49 of the U. P. Consolidation of Holdings Act the suit which could be or ought to be brought under the said provisions of the Act were hit by Section 49 as being barred in the civil court. The provisions of Section 49 is little different from that of Section 331 though in substance both are almost same. But the distinguishing feature in both Section 49 of the U. P. Consolidation of Holdings Act and Section 331 of U. P. Z. A. and L. R. Act is that in both cases the Court is being brought within the purview of U. P. Consolidation of Holdings Act or under the U. P. Z. A. and L. R. Act for a relief which could be had from the authority mentioned in both the Act were prohibited from being proceeded with by a civil court- Thus in one aspect both the sections were common. Now as I have observed above that the proceedings "involved in this case does not come within the purview of Section 331 and, therefore, the said provision of Section 331 cannot be attracted in the present case and the decision in the case of Smt. Dulari Devi (supra), therefore, cannot be attracted, in the said case, it has not been laid down that wherever a void deed is involved, the suit is to be preferred before the revenue authority irrespective of the satisfaction of the conditions contained in Section 49 vis-a-vis Section 331 if that can be stretched to such an extent. The said decision can be distinguished only on the facts that the same relates to Section 49 of the U. P. Consolidation of Holdings Act but since there is something common in the two Sections, in my view the distinguishing feature is the question as to whether the relief could be had within the ambit of special statutes being the revenue law concerning this case. As I have found that it cannot be had within the ambit of any provisions contemplated within the revenue law, therefore, that decision does not help Mr. P. Chandra, learned counsel for the petitioner.

12. On the other hand, the Full Bench of this Court in the case of Ram Padarth and others v. Second Addl. District Judge. Sultanpur and others, 1989 AWC 290,

had held that a suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right or status of a tenure-holder is necessarily needed in which event relief for cancellation will be surplusage and redundant. A recorded tenure-holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document which made him to approach the Court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue court.

13. Mr. Prem Chandra, on the other hand, contended that in the present case the sale deed was acted upon and the name of the defendant has been mutated in the revenue record, therefore, the defendant is a recorded tenure-holder and the plaintiff does not have prima facie title in her favour and, therefore, the ratio decided in the Full Bench cannot be attracted.

14. I am unable to persuade myself to agree with the contention of Mr. Prem Chandra in the facts and circumstances of the case, inasmuch as in the present case admittedly the name of the defendant was recorded as tenure-holder only by virtue of the alleged sale deed, therefore, for the purpose of seeking cancellation of the sale deed prima facie the plaintiff had a title in respect of the property which was recorded in her name prior to the alleged execution of the sale deed. If the name of the defendant has been recorded subsequent to the alleged execution of the sale deed that will not turn the table to dispel the ratio decided by the Full Bench in the present case. Then again the relief that might be claimed by the plaintiff would be only a consequential relief, if she succeeds in getting the sale deed cancelled. However, she has not asked for any such relief. If relief in the suit is granted, it would not necessarily change any status or right between the parties, in case she fails in the suit, then also no status or right under the revenue authority is required to be adjudicated upon. Therefore, the ratio decided by the Full Bench as referred to in the case of Ram Padarth (supra) applies in the present case with full force. Same view has been taken by this Court following the decision in the case of Ram Padarth (supra) by a learned single Judge in the case of Dwarika Singh Vs. The District Judge and Others, . Similar view was taken in the decision in the case of Sadaruddin and others v. District Judge, Allahabad and others 1996 RD 287, by me relying on the decision in the case of Ram Padarth (supra). The decision in the case of Ram Padarth (supra), was also followed in the case of Radhey Shyam v. District Judge, Gorakhpur and others 1993 AWC 836. The decision of Full Bench in the case of Ram Padarth (supra), was relied upon by the Supreme Court in the case of Smt. Bismillah Vs. Janeshwar Prasad and Others, .

15. In view of the discussion made above, I have not been able to agree with the contention of Mr. Prem Charidra who argued with great vehemence. On the other hand. I am in agreement with the decision given by the learned 1st Addl. District Judge Court, Jaunpur on 20.3.1991 in Civil Revision No. 205 of 1989 and hold

that the present case is maintainable before a civil court.

16. The writ petition, therefore, fails and is accordingly dismissed.

There will be, however, no order as to cost.

17. It appears that the suit is pending since 1983. This Court, therefore, expects and desires that the said suit should be decided as early as possible preferably within one year from the date a certified copy of this order is produced before the trial court.